

THE REPORT OF THE BOARD OF POLICE COMMISSIONERS
CONCERNING THE SHOOTING OF EULIA LOVE
AND THE USE OF DEADLY FORCE

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PART I - THE SHOOTING OF EULIA LOVE

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I.

INTRODUCTION

OCT 9 1979

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This section of the Commission's Report presents the results of an examination and evaluation conducted by the Board of Police Commissioners of the events leading to the death of Mrs. Eulia Love on January 3, 1979.

On April 17, 1979, the District Attorney ^{Los Angeles Public} of his decision that no criminal charges would be filed against the two police officers involved in the shooting. ^{INSTITUTE OF GOVERNMENTAL STUDIES LIBRARY} The sole issue ^{FEB 4 1981} resolved in the District Attorney's report was whether the officers ^{UNIVERSITY OF CALIFORNIA} committed the crimes of murder or manslaughter; this necessarily included the issues of self-defense and justifiable homicide.

Similarly, the United States Attorney for the Central District of California considered the matter from the standpoint of possible violations by the officers of federal law. On

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August 9, 1979, that Office announced its conclusion that there was no basis for prosecution of the officers under the Civil Rights statutes.

The Department's investigation and evaluation of officer-involved shooting incidents, unlike those of the District Attorney and the United States Attorney, is not undertaken for the purpose of resolving issues relating to criminal prosecution of the officers. Rather the Department's task is to analyze the existing Department policies and apply them to the facts of each case so that it may properly evaluate the conduct of its officers and determine what administrative action, if any, is required.

In the case of Eulia Love, the majority report of the Department's Shooting Review Board concluded that the actions taken by the involved officers complied in all respects with Department policies concerning the use of firearms and deadly force. A minority report of the Review Board concluded that the officers' actions were "in policy but failed to meet Department standards."

The Police Commission has completed an independent examination of the circumstances and reevaluated the Department's previous determination in light of additional factual information. The Commission concludes, in direct contrast to the majority findings of the Shooting Review Board, that the actions taken by the

officers violated the policies of the Los Angeles Police Department governing the use of firearms and deadly force, and that the officers made serious errors in judgement, and in their choice of tactics, which contributed to the fatal shooting of Eulia Love.

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II.

STATEMENT OF FACTS

The facts presented in this report combine the results of investigations performed by the Los Angeles Police Department's Robbery-Homicide Division (R.H.D.) and the Los Angeles District Attorney's Office (D.A.). At the request of the Commission, the Department reopened its investigation and the results of that supplemental investigation are included herein.

On January 3, 1979, at approximately 11:15 a.m., Mr. John Ramirez, an employee of the gas company, arrived at the Love residence. He identified himself and spoke to Mrs. Love at the door. He then went to shut off the gas at the side of the house. Mrs. Love approached Ramirez, advised him that she would not allow him to disconnect her gas, and hit him with a shovel, inflicting a contusion to his arm. He noted that she was "frothing at the mouth" and, as she prepared to hit him again, left the area. He went back to his office, at which time the Police Department was called.

(D.A. 9-10; R.H.D. 1-2)

Sometime between eleven and noon, Mrs. Love went to the Boys Market to attempt to pay her gas bill. When she was informed that she could not pay her gas bill there, she purchased a money order in the amount of the minimum payment required to continue her gas service (\$22.09). (R.H.D. 12)

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At 1:15 p.m., Mr. William L. Jones, an employee of the gas company, told his supervisor what had happened to Ramirez, and told him that he would be going to the Love house. The supervisor said that Jones should have the police accompany him. (R.H.D. 2-3) At 2:30 p.m., Ramirez was interviewed by the Los Angeles Police Department and signed an assault with a deadly weapon report (ADW). He was given a Victim's Report Memo. (R.H.D. 2)

Jones and Mr. Robert Aubry, gas company employees, went to the vicinity of the Love residence. At 3:59 p.m.,¹ Jones called the police dispatcher and asked for a patrol car to join them at the residence. They stopped down the street from the Love house in their separate vehicles. (D.A. 11; R.H.D. 3) Mrs. Love came out of her house and spoke to Aubry, who told her that he was not there to turn off her gas. She indicated that she would pay \$20.00, but that she would not pay the \$80.00. (D.A. 12; R.H.D. 3-4) She

¹The times in this Statement of Facts differ from those reported in both the Department's investigative report and the District Attorney's report. The times used in this Report were taken directly from communication cards prepared at the time of the incident. These cards are on file at the Department.

went back in her house, and two or three minutes later came out with a knife, at which time she began hacking the branches of a tree on her front lawn. (D.A. 12; R.H.D. 4).

At 4:15 p.m., the police dispatcher put out a call for a car to join the gas company employees ("415 business dispute. Meet the gas man at 11926 South Orchard. Code 2.") Shortly thereafter, at 4:15:52 p.m., Officers Hopson and O'Callaghan acknowledged the call.

When the police officers arrived at the scene, they stopped their patrol car near the gas company vehicles and spoke to Jones. Jones advised the officers that Mrs. Love had hit one of their men with a shovel earlier that day when he tried to shut off the gas, showed them the Victim's Report Memo, and asked them to stand by while he and Aubry either collected the money or turned off the gas. (D.A. 12) The officers observed Mrs. Love as she walked back and forth on the sidewalk in front of her house with a knife in her hand and yelled at the gas men. The officers drove to the front of Mrs. Love's house and got out of the car, immediately drawing their guns. (D.A. 13) Mrs. Love appeared to be agitated and told the officers they were not going to shut off her gas. She uttered a number of obscene remarks. (D.A. 13; R.H.D. 5) The officers demanded that Mrs. Love drop the knife. (D.A. 13; R.H.D. 5) During this time, one of Mrs. Love's daughters, Sheila (age 15), came out

of the house briefly, but went back in at the command of Officer Hopson. (D.A. 14)

When Mrs. Love began to back up towards her house, Officer O'Callaghan followed her. As she retreated, she was making thrusts towards him with her knife. O'Callaghan was approximately six feet away, and had his gun and baton out. At this point Mrs. Love's younger daughter, Tammy (age 12), came out onto the porch and then went back into the house. The policemen heard children's voices² inside the house at this time. (R.H.D. 6) Three witnesses, including Aubry, also indicated that Hopson signalled the gas company employees, as if to say, "come on" during the time Mrs. Love was retreating. (D.A. 14-15)

Mrs. Love stopped at the intersection of the walkway leading from the public sidewalk and the walk to her house, and faced the policemen with the knife in her right hand. O'Callaghan was, at this point, five feet west of her, and Hopson was ten feet southwest

² Neither the District Attorney's Report nor the Department's investigation indicates that anyone other than Mrs. Love's two daughters was in the house at any time during the incident.

of her. (D.A. 16; R.H.D. 6) Hopson had his gun outstretched in both hands and was in a semi-crouched position. O'Callaghan had his gun in his right hand, pointed at Mrs. Love, and his baton in his left. Mrs. Love started to lower her right hand with the knife in it. O'Callaghan hit her hand with his baton and knocked the knife to the ground, backing away as he did so. She picked up the knife and drew her arm back as if she were going to throw it. At this time Hopson warned her not to throw the knife. O'Callaghan was twelve feet away and Hopson was eight feet away. O'Callaghan dropped the baton and moved into a two-handed, semi-crouched position. Hopson was still in a two-handed, semi-crouched position. Each officer fired six rounds in a rapid-fire sequence, while the knife was thrown by Mrs. Love, wounding her eight times. (D.A. 16-25; R.H.D. 6-7) The order of these events is uncertain, as the events were almost simultaneous and witness reports are in conflict. The knife was recovered 68 feet away.³

³It should be noted that there were no prints on the knife when it was recovered. There are inconsistent statements as to whether the knife landed 68 feet away or somewhat closer to the body, including those of two witnesses who stated that the knife bounced off O'Callaghan and landed at his feet. (D.A. 16-25)

After the firing ceased each officer ejected the spent casings and reloaded his gun. O'Callaghan then returned to the police car and at 4:21:45 p.m. placed an "officer needs help" call and a request for a rescue ambulance. Hopson walked to Mrs. Love's body, rolled it to the left and placed handcuffs on her wrists. (R.H.D. 8)

The ambulance arrived at 4:25 p.m. (R.H.D. 8), and at 4:26 p.m. Mrs. Love was pronounced dead. (D.A. 25; R.H.D. 8)

Although there are no records of the officers' time of arrival at the scene, there are records that show that the officers were at or near Avalon and 120th Street when they accepted the call at 4:15:52 p.m. Empirical tests demonstrate that the average Code 2 (urgent but without red light or siren) driving time to the Love residence is two minutes and 11 seconds. Allowing approximately 30 seconds for the conversation with Jones, this would place the officers at the Love house at approximately 4:18:33 p.m. The time of death may be estimated at 4:21 p.m., allowing 45 seconds after the shooting for the officers to reload and place the call for the ambulance. Thus, the maximum period of time which could have

elapsed between the officers' arrival and the shooting of Mrs. Love was two to three minutes.⁴

The majority report of the Shooting Review Board (S.R.B.) relied upon the following in reaching its conclusions:

1. The officers left their vehicle with the intent to disarm Mrs. Love and arrest her for assault with a deadly weapon (S.R.B. 2).
2. The officers did not rush the situation but spent a minimum of seven minutes talking to Mrs. Love (S.R.B. 2).

⁴The time estimates were developed by Robbery-Homicide Division in its supplemental investigation, at the request of the Commission. Accepting these time estimates, the following time line can be established:

4:15 p.m.	Dispatcher puts out call
4:15:52 p.m.	Call acknowledged by Hopson and O'Callaghan
4:18:03 p.m.	Officers arrive at gas company truck
4:18:33 p.m.	Officers arrive at Love residence
4:21 p.m.	Time of death

Elapsed time (arrival to time of death): 2 minutes, 27 seconds

3. The officers advanced toward Mrs. Love, instead of retreating, because they feared for the physical safety of the children inside the house. (S.R.B. 3)
4. Six shots were fired without pause and in rapid succession by each of the officers. (S.R.B. 3)

The following facts (which are discussed more fully later in this report) should be noted with respect to the conclusions contained in the majority report of the Shooting Review Board. First of all, there are no substantial objective facts to support the conclusion that the officers' intent at the time they left the car was to arrest Mrs. Love for an assault with a deadly weapon. Second, the seven-minute time period described by the Majority was based on erroneously reported facts. Third, there are no facts which support a reasonable basis for the officers' fear for the safety of the children, nor is there any substantial evidence that the officers advanced while Mrs. Love retreated because of fear for the children's safety. (D.A. 28) Finally, as discussed below, rapid-fire discharge of twelve shots was improper in the circumstances, and in conflict with departmental policy.

One additional factor was raised by the minority report of the Shooting Review Board. This factor involved some uncertainty as to the position of Mrs. Love when the shots were fired. Contrary to

the opinion of Dr. Jennifer Rice, the pathologist who conducted the autopsy of Mrs. Love under the auspices of the County Coroner's Office, the report of Dr. Richard Myers, a highly respected independent forensic pathologist consulted by the Department,⁵ concludes that at least one of the gunshot wounds⁶ was inflicted when Mrs. Love was on the ground. Although stating that it is not possible to determine the sequence of the shots, Dr. Myers' report concludes that the pattern of shots fired is consistent with the officers following a moving target down. The majority report did not comment on this issue.

⁵Dr. Myers' has been an attending Pathologist at Los Angeles County-University of Southern California Medical Center since 1950. He is also Director of Laboratories and Pathologist at Valley Presbyterian Hospital.

⁶The shot in question was labelled in the coroner's report as Gunshot Wound No. 6. The bullet recovered near the exit wound was completely flattened on one side, indicating contact with a hard surface at the exit point. Although no concrete markings were discovered on the bullet, the only surface at the scene which could have caused this result was the sidewalk where Mrs. Love fell during the shooting.

III.

COMMISSION ANALYSIS

A. Justifications for Shooting in Majority Report of the Shooting Review Board

1. Officers' Intent to Arrest for ADW

The first factor cited in the majority report of the Shooting Review Board in support of the actions of the officers was their intent to arrest Mrs. Love for assault with a deadly weapon. However, there is no substantial evidence in the record to support this intent; in fact, the record reflects the contrary.

First, the record indicates that the officers' purpose in being on the scene was to assist the gas company. The initial call placed by the gas company to the dispatcher asked for back-up assistance. (R.H.D. 3) The dispatcher's call received by Hopson and O'Callaghan instructed them to meet the gas man to handle a business dispute. (R.H.D. 4) When the officers arrived at the scene, Officer Hopson inquired of one of the gas company employees, "What will you need from us?" (R.H.D. 5)

Second, there are no facts indicating that the officers at any time told Mrs. Love that she was to be arrested for assault on Ramirez earlier in the day.⁷

⁷ Penal Code Section 841 requires an arresting officer to inform the person to be arrested of the intention to arrest him unless there is reasonable cause to believe that the person is actually committing or attempting to commit an offense, or is being pursued immediately after the commission of an offense or after an escape.

Finally, Hopson's signal to Jones and Aubry during Mrs. Love's retreat indicates the officers' belief that it had become possible at that time for the gas company employees to proceed with their task.

2. The Seven-Minute Discussion

Although the Shooting Review Board stated that there was a seven-minute period during which the officers attempted, verbally and by the use of a baton, to disarm Mrs. Love, the reported facts contradict this conclusion. At most, a period of two to three minutes transpired between the time the officers got out of their car and drew their weapons, and the time of Mrs. Love's death.

The Department's emphasis in training is on the use of minimal force and the attempt to deescalate and defuse a situation wherever possible. Great importance is attached, in both ordinary patrol training and SWAT training, to attempt to calm a potentially violent individual. In Eulia Love's case the officers were faced with a clearly distraught and agitated individual. The officers' decision to draw their guns and approach Mrs. Love with weapons pointed served to escalate the situation drastically.

3. Danger to Children

There are no reported facts to indicate that Mrs. Love's daughters were in any danger from her at the time the officers acted, or at any time. In addition, witness reports

state that each of the daughters was outside of the house at least once during the incident, but returned almost immediately. No attempt was made to have either daughter leave the "zone of danger". Similarly, no attempt was made by the officers to get between Mrs. Love and the front entrance of her home, as the minority report of the Shooting Review Board points out.⁸

4. Rapid Firing of Shots

The statements of witnesses with respect to the brevity of the period in which the shots were fired, and the conclusions of

Dr. Myers are, in general, consistent with the Shooting Review Board's conclusion that the entire series of twelve shots was in rapid-fire sequence. In this respect, we agree with the Shooting Review Board's factual findings.

⁸The minority report concluded, we believe correctly, that "(b)oth officers reiterated that they were afraid that Love would enter the dwelling and injure the children inside. I believe this statement, while not fallacious, was an afterthought added to justify their actions. To me, this statement emphasizes poor tactics by both officers. If the officers believed this, then either could have stepped over the hedge and onto the porch preventing Love from entering the house. Neither chose to do so, but rather continued advancing on the retreating Mrs. Love."

B. Application of Department Policies to the Love Case

Two central questions with respect to Department policy and procedure are raised by this case:

Were the decisions to draw weapons and to advance as Mrs. Love retreated consistent with Department policy?

Were the use of deadly force and the extent of deadly force used consistent with Department policy?

1. The Drawing of Firearms and Subsequent Tactics

In analyzing the first of these questions, it is necessary to evaluate the knowledge of the officers at the time they made the decision to draw their guns, that is, at the time they arrived at the Love house.

At that time the officers knew the following:

(a) Earlier that day when a gas man attempted to turn off the gas at her house, Mrs. Love hit him with a shovel;

(b) Mrs. Love was agitated, as indicated by her pacing and her continual yelling at the gas company employees;

(c) She had a knife in her hand; and

(d) The gas company employees had requested stand-by assistance.

The factors that should be considered in assessing the action taken by the officers are the following:

(a) Department escalation--de-escalation policy on using the least amount of force necessary;

(b) The degree of danger presented to the officers and others;

(c) Available techniques for disarming a person with a knife; and

(d) Tactical effects of drawing and pointing guns.

a. Department Policy

The training policy of the Los Angeles Police Department stresses the importance of gradual escalation in the use of force. The objective is to escalate or de-escalate to the minimum force necessary for control of the suspect. In employing such a procedure, officers should try to talk to an individual first, and then use gradually increasing levels of force in response

to further actions taken by the individual. The display of a weapon, considered a high level use of force, is one of the last alternatives to be used. Only deadly force itself is considered to be a higher level of force.

The Department policy regarding the use of firearms authorizes the use of deadly force only in the following three situations:

- (1) To protect (the officer) or others from an immediate threat of death or serious bodily injury;
- (2) to prevent a crime where the suspect's actions place other persons in jeopardy of death or serious bodily injury; or
- (3) to apprehend a fleeing felon for a crime involving serious bodily injury or the ~~risk~~^{use} of deadly force ~~when~~^{where} there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed. (Department Manual Section 1/556.40)

The policy on the use of firearms provides clearly that deadly force shall be exercised only when all reasonable alternatives have been exhausted or appear impracticable. With respect to the drawing of firearms, the policy states that there are limited circumstances in which a firearm should be drawn and emphasizes that officers must not draw their weapons without a

reasonable belief, at the time of drawing the weapons, that it is necessary. In no case does a mere feeling of apprehension justify drawing of the weapon. The Department policy governing the use of firearms specifically states:

"Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling the situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use a firearm in conformance with this policy on the use of firearms." (Department Manual Section 1/556.80.)

The Police Commission's interpretation of that section of the firearms policy adopted in September, 1977, includes the following language:

"An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified."

b. Danger to Officers and Others

In this situation, the officers were presented with a clearly distraught individual who had committed an assault with a shovel earlier in the day. However, no one was within any reasonable "zone of danger" or was being threatened by Mrs. Love at the time of the officers' arrival at the scene.

After getting out of the car the officers approached Mrs. Love but did not come within striking distance. They maintained a narrow separation from her, even when she retreated toward her house. However, during the retreat, they did motion for the gas company employees to approach. Had the officers believed that there was serious danger to themselves, they had reasonable alternatives available to minimize that danger; had they believed that there was serious danger to others, they would not reasonably have motioned others forward.⁹

⁹As was pointed out in the Shooting Review Board's minority report, "(t)hat their fears were minimal is indicated by the fact that both officers fully exposed themselves and neither attempted to take defensive action".

c. Techniques for Disarming an Individual with a Knife

The usual techniques used in disarming an individual with a knife are baton strikes and kicks. Other techniques, such as the use of martial arts, are generally not used because of the likelihood of injury if distance is not maintained. In choosing a technique, officers are to consider the relative size of the individual, his or her mental state, and other similar factors. In any event, these techniques are to be employed before resorting to deadly force.

d. Tactical Effects

By displaying their guns immediately, the officers severely limited their alternatives. It would not be reasonable to believe that Mrs. Love could be calmed by the approach of two police officers with drawn guns. Thus, the first result of the officer's actions was, predictably, an immediate escalation of the situation.

The effective use of baton strikes, the preferred technique, was eliminated as the events proved. The officer who used the baton to knock the knife out of Mrs. Love's hand was unable to retrieve it because he had a gun in one hand and a baton in the other. Thus, the decision to draw guns immediately meant that if the display of force was not sufficient the use of deadly force would be required.

Once the stage for the use of force was set, the officers continued to escalate the situation by their actions. By advancing on Mrs. Love as she attempted to retreat, they put themselves in a situation of increased danger.¹⁰ The justification given for the continued pursuit (concern for the safety of children) was, as has been shown above, without basis in any of the reported facts.

The decision to draw and point their weapons immediately, and to advance as Mrs. Love retreated, locked the officers, before all reasonable alternatives had been exhausted, into a situation which precipitated the use of deadly force. Given the circumstances of the case, and the availability of tactical alternatives, the officers' actions demonstrated poor judgement, and poor choice of tactics, and violated the departmental policy which prohibits the premature drawing of weapons. The result of their actions clearly demonstrates the necessity for that policy.

¹⁰ Department records show that, at least since 1907, no Los Angeles Police officers have been killed by suspects using a sharp object.

2. Deadly Force - Its Use and Extent

We will next consider the situations in which the use of deadly force is authorized. The first situation is the apprehension of a fleeing felon. This justification is limited, but the limits are of no concern here, as Mrs. Love was not a fleeing felon.

The second situation, the prevention of a crime where the suspect's actions place persons in jeopardy of death or serious bodily injury, is also not applicable. At the time the officers left the car, Mrs. Love had not threatened anyone with her knife. The only threat at that point had been five hours earlier.

The final situation in which deadly force may be used, the protection of self or others from an immediate threat of death or serious bodily injury, is the only conceivable basis for its use in this case. However, at the time the officers left the car, Mrs. Love did not appear to be an immediate threat to anyone. There could have been no question of any need to protect her daughters at this time. Further, there is nothing in the record which indicates that she was advancing toward the officers or any other person at the time they left the car. The only use of the knife up until that time had been to hack the branches off a tree.

Approximately two and a half minutes later, when O'Callaghan knocked the knife out of Mrs. Love's hand with his baton and she picked the knife up and drew her arm back, the situation had escalated considerably. The shooting of Mrs. Love and the throwing of the knife followed immediately after Mrs. Love retrieved her knife. Although the inconsistencies in the witness statements about this series of events cannot be satisfactorily resolved, it would appear that the shots and the throwing of the knife occurred almost simultaneously. If at that time the officers were justified in using deadly force in self-defense--and the facts before the Commission do not enable us to make a final determination as to that question--it was in substantial part because they had themselves prematurely escalated the confrontation and placed themselves in a situation where the use of deadly force became necessary. Moreover, since we conclude below that the officers violated departmental policies by using rapid fire under the circumstances of this case, it is not necessary that we determine which specific shots violated those policies.

We next consider the officers' use of rapid-fire, which resulted in the firing of twelve bullets by the two officers.

Department policy and training with respect to shooting stress two basic concepts:

- (a) stop to think, not to kill; and
- (b) first-shot accuracy.

It is often difficult to shoot with great accuracy in an emergency situation; the training program therefore emphasizes shooting at the central body area, although such shots are more likely to be fatal. However, there is a concomitant emphasis on limiting the number of shots and attempting to stop the individual with the first shot. In any event, stress is placed on observing the effect, if any, of the first shot before refiring.

Department policy requires in those rare cases where the use of firearms is necessary that the risk of death must nonetheless be minimized. To that end, the Department policy governing the use of firearms states:

"Minimizing the Risk of Death. An officer does not shoot with the intent to kill; he shoots when it is necessary to prevent the individual from completing what he is attempting. In the extreme stress of a shooting situation, an officer may not have the opportunity or ability to direct his shot to a non-fatal area. To require him to do so, in every instance, could increase the risk of harm to himself or others. However, in keeping with the philosophy that the minimum force that is necessary should be

used, officers should be aware that, even in the rare cases where the use of firearms reasonably appears necessary, the risk of death to any person should be minimized." (Department Manual Section 1/556.35)

The opinion of Dr. Myers suggests that the officers, in "following a moving target" continued to shoot after the threat of the thrown knife had ended. The disregard of single-shot accuracy and the use of rapid fire may have meant the difference between injury and death for Mrs. Love. This cannot be determined conclusively, however, in the absence of certainty concerning the order in which the shots were fired. In any event, and in light of Department policy regarding minimizing the risk of death, the firing of twelve shots in rapid-fire sequence was excessive and cannot be justified. Under these circumstances, the use of rapid fire was contrary to departmental policy.

IV.

DISCIPLINE

We believe that the final departmental record and public record must reflect the conclusion that the officers involved in the shooting of Eulia Love violated applicable Los Angeles Police Department policies and standards. The question of whether these officers should now be ordered by the Chief of Police to stand trial before a Board of Rights, which has the sole authority under our City Charter to impose significant punishment, is a separate matter which has troubled the Commission greatly.

Prior to the Commission's study of the Love shooting, the Department conducted an investigation under the then existing rules and procedures. A Department Shooting Review Board reviewed the matter and the majority, again under the existing rules and procedures, found no violation of Department policies. Finally, the Chief of Police, who, under the Charter, has the legal responsibility for discipline, considered the matter thoroughly and decided that no discipline should be imposed. Under the then existing rules and procedures, the Chief's decision constituted a final determination regarding the issue of discipline. His final decision was communicated to the individual officers and to the public. The officers were entitled, under the then existing procedures, to rely on the Chief's final decision and to conclude that, since their case had been finally adjudicated by the Chief of Police, they could not again be placed in jeopardy.

Based on our examination and review of the Love shooting, we are in disagreement with the decision reached by the majority of the Shooting Review Board. Certain of the facts which affect our conclusion were not before the Chief of Police when he adjudicated the disciplinary issue. However, while the Commission might well have reached a contrary conclusion to that reached by the Chief even under the facts presented to him, we believe that any attempt to impose discipline at this time would violate the rights to due process of law to which the two officers, like all other persons, are entitled .¹¹

For the reasons set forth above, we are not directing that the Chief institute disciplinary proceedings. We are, however, directing that a copy of our findings be placed in the officers' personnel files. We would also note, although it is not a basis for our decision, that referral of this ~~the~~ matter, by the Chief, to a Board of Rights at this time would in our opinion be futile and would serve no useful purpose, since we are persuaded that the Board would not impose discipline upon the officers in view of the judgements regarding this case previously expressed by the Chief of Police and the Shooting Review Board.

¹¹In addition, application of the equitable principles of laches and estoppel might well bar the Department from proceeding with disciplinary action at this time.

We must add, in fairness, that the fault for the disastrous shooting of Eulia Love does not lie solely with the individual officers involved. A serious question exists in our minds as to how well the Department trained and prepared the officers to deal with the situation they encountered. We question also whether the Department should have sent its officers on the assignment which resulted in the fatal shooting, just because the gas company wanted to collect an overdue bill. These and other matters will be considered fully in later sections of this Report.

V.

COMMISSION FINDINGS

1. The officers' premature drawing of their weapons, and their use of rapid fire under the circumstances of the Love case, were both in violation of Department policies. In addition, the officers made serious errors in judgement, and in their choice of tactics, which contributed to the fatal shooting of Eulia Love.

2. The Commission has reviewed the Department's policy on the use of firearms and finds that there are no inadequacies in that policy which contributed to the shooting of Eulia Love. On the contrary, if properly implemented, the policy provides sufficient safeguards against such a shooting. The Commission has concluded that further revision of the policy is not necessary at this time. The present Department policy is appropriately more restrictive than the requirements imposed by state law.

3. The Commission's review of the Department's investigation and evaluation of the shooting of Eulia Love reveals that many of the factors on which the majority of the Shooting Review Board relied in reaching its conclusions were based on erroneous or misconstrued facts. The Board's failure properly to exercise its fact-finding function, and to obtain and assess all available evidence, prevented it from giving due consideration to all elements of Department policies and standards.

4. In view of the Department's previous final determination, in accordance with existing rules and procedures, that no discipline would be imposed upon the officers, the Commission has concluded that an attempt to impose discipline at this time would violate the officers' due process rights. We are, however, directing that a copy of our findings be placed in the officers' personnel files.

5. Substantial changes are required in the system of investigating and adjudicating officer-involved shootings and other use of force incidents. This subject will be considered fully in a subsequent section of our Report.

6. Training standards and methods require reevaluation. This subject will also be considered fully in a subsequent section of our Report.

7. The Department's written civil disputes policy does not clearly prohibit officers from assisting in bill collection efforts or giving the appearance of providing such assistance. The Commission is adopting a revised policy in order to prevent a recurrence of the events which led to the officers' intervention in a dispute between the gas company and a customer delinquent in the payment of her bill. The revised policy will be included in a subsequent section of our Report.

4. In view of the Department's limited staff, it is suggested that an assistance be assigned to the Department to assist in the processing of the cases. The Department has been advised that the assistance should be assigned to the Department as soon as possible. The Department has been advised that the assistance should be assigned to the Department as soon as possible. The Department has been advised that the assistance should be assigned to the Department as soon as possible.

5. The Department has been advised that the assistance should be assigned to the Department as soon as possible. The Department has been advised that the assistance should be assigned to the Department as soon as possible. The Department has been advised that the assistance should be assigned to the Department as soon as possible.

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8. The Commission has determined as a result of its review of the Love shooting that there are a number of other areas in which reevaluation or changes in Department policies, standards, or procedures are necessary. These additional matters will be considered fully in a subsequent section of our Report.

U.C. BERKELEY LIBRARIES



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